

AMENDING THE ACT OF JANUARY 27, 1927, RELATIVE TO
RESTRICTIONS APPLICABLE TO THE FIVE CIVILIZED
TRIBES, OKLAHOMA

DECEMBER 15, 1943.—Ordered to be printed

Mr. THOMAS of Oklahoma, from the Committee on Indian Affairs,
submitted the following

REPORT

[To accompany S. 1579]

The Committee on Indian Affairs, to whom was referred the bill (S. 1579) to amend the act of January 27, 1933 (47 Stat. 777) relative to restrictions applicable to Indians of the Five Civilized Tribes in Oklahoma, having considered same, report thereon with the recommendation that it do pass without amendment.

Section 9 of the act of May 27, 1908, as amended by the act of April 12, 1926 (44 Stat. 239), reads as follows:

The death of any allottee of the Five Civilized Tribes shall operate to remove all restrictions upon the alienation of said allottee's land: *Provided*, That hereafter no conveyance by any full-blood Indian of the Five Civilized Tribes of any interest in lands restricted by Section 1 of this Act acquired by inheritance or devise from an allottee of such lands shall be valid unless approved by the county court having jurisdiction of the settlement of the estate of the deceased allottee or testator. * * *

The above section continued qualified restrictions as to lands passed to full-blood Indian heirs and devisees of an allottee on the death of the allottee (*Commissioner of Internal Revenue v. Owens*, 10 Cir. 78 F. (2) 768, 775; *Holmes v. United States*, 10 Cir. 53 F. (2) 260, 261; *Parker v. Richard*, 250 U. S. 235, 238; *Harris v. Bell*, 254 U. S. 103). The act of January 27, 1933 (47 Stat. 777), in part provides:

No conveyance of any interest in land of any full-blood Indian heir shall be valid unless approved in open court after notice in accordance with the rules of procedure in probate matters adopted by the Supreme Court of Oklahoma in June 1914 * * *

The issue presented in the recent case of *John C. Murray v. Buster Ned et al.* No. 2626 in the United States Circuit Court of Appeals, Tenth Circuit, decided February 19, 1943, in which a petition for rehearing was denied on March 24, 1943, and a second petition for

rehearing was denied on June 12, and in which case a petition for writ of certiorari in the Supreme Court of the United States was denied on November 8, 1943, was whether the latter act reimposed restrictions on land from which restrictions had been removed when the lands descended to full-blood Indian heirs of the Five Civilized Tribes.

The opinion of the court in the above case held that, when the land passed to the full-blood Indian heirs involved, it became restricted against alienation unless approved in open court after notice, in accordance with the rules of procedure in probate matters adopted by the Supreme Court of Oklahoma in June of 1914.

The import of this decision is, in effect, to hold that no conveyance of any interest in any land by any full-blood Indian heir of the Five Civilized Tribes is valid unless approved by the county court of Oklahoma having jurisdiction.

The difficulty in examining land titles, in view of this opinion, will at once be apparent. From the abstract of title, it is impossible to tell whether the current owner of the land is a full-blood Indian heir or not. For example, a full-blood member of the Five Civilized Tribes acquires land by purchase, either in or out of the State of Oklahoma, and, at his death, the property descends, under the laws of the State in which the land is located, to full-blood Indian heirs of such full-blood member of the Five Civilized Tribes. The estate is probated in the regular order and the full-blood heirs thereafter convey the property to a subsequent purchaser. Under the decision of the court above mentioned, such conveyance is invalid unless approved by the county court of Oklahoma having jurisdiction of the full-blood heirs. Under such circumstances the purchaser of the land from the full-blood heirs could not be advised from the record that his grantors were full-blood Indian heirs.

Undoubtedly it was the intent of Congress, by the said act of January 27, 1933, to impose only the condition of approval with respect to allotted lands of a full-blood allottee of the Five Civilized Tribes, which has passed by inheritance to the full-blood heirs of such allottee, instead of imposing such condition on the alienation of any land of a full-blood Indian heir of the Five Civilized Tribes.

Under the literal language of the said act of January 27, 1933, and under the said opinion of *Murray v. Ned* the conveyance of any land by a full-blood Indian heir, acquired by inheritance from any source whatsoever, would be invalid unless approved in open court in accordance with the language of the act. Clearly, there is need for remedial legislation.